

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GAETANO D' ATTORE,

Plaintiff,

-v-

10 Civ. 815 (JSR)

NEW YORK CITY DEPARTMENT OF
CORRECTION; CAPTAIN SALMON,
Shield # 10315; and DR. DORA SCHIRO,
Commissioner, New York City
Department of Corrections,

Defendants.

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ORDER

JED S. RAKOFF, U.S.D.J.

On September 27, 2012 the Honorable Michael H. Dolinger, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that the Court deny the plaintiff's motion for summary judgment. The Report and Recommendation also recommends that the Court grant in part the defendants' motion for summary judgment, dismissing Commissioner Dora Schriro and the New York City Department of Corrections as defendants in this case, but deny defendants' motion for summary judgment with respect to Captain Salmon.

Objections to the Report and Recommendation were due on October 15, 2012. By two letters postmarked October 9, 2012, plaintiff submitted a "motion for an order" pursuant to Federal Rules of Civil Procedure 72, 12, and 15(a) that would "object to the Report and Recommendation" and "grant[] plaintiff the relief sought in its entirety." Defendants did not timely submit objections to the Court.

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The Court has reviewed the objections to the Report and Recommendation contained in the plaintiff's letters and the underlying record de novo. Having done so, the Court finds itself in complete agreement with Magistrate Judge Dolinger's Report and Recommendation and hereby adopts its reasoning by reference.

Accordingly, the Court hereby dismisses the action against Commissioner Dora Schriro and the New York City Department of Corrections, with prejudice. Insofar as the plaintiff's letters can be construed as a motion to amend the Complaint to name defense counsel Lisa M. Richardson as a defendant, that motion is denied for the reasons described in Magistrate Judge Dolinger's Report and Recommendation. The action against Captain Salmon, the remaining defendant, will proceed.

The case is hereby referred to Magistrate Judge Dolinger to be made ready for trial, including exploring with Pro Se Litigation whether there is counsel available to represent plaintiff, should he so desire. The Magistrate Judge and/or head of Pro Se Litigation should report back to the Court no later than January 31, 2013. The Clerk of the Court is directed to close documents numbered 37, 39, and 66 on the docket of the case.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
November 26, 2012